

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF DOUGLAS

THIS AGREEMENT is entered into 24th of August, 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY, acting by and through its MAYOR, and CITY COUNCIL the ("City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of transportation enhancement activities.
4. Such project lies within the boundary of the City has been selected by the City; the survey of the project has been completed; and the plans, estimates and specifications will be prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for their approval.
5. The City, in order to obtain federal funds for the construction of the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City, State and FHWA, including actual construction engineering and administration costs (CE)
6. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

NO. 27027
Filed with the Secretary of State
Date Filed: 08/24/04

Janice K. Brewer
Secretary of State

By: David D. Schenewald

7. The work embraced in this agreement is for the restoration of El Paso Southwest Railroad Depot Fountain hereinafter referred to as the "Project". The Project involves fountain restoration and incidental landscaping. The City will be responsible for design, bidding, construction administration, maintenance, electrical power, water connections and landscape maintenance to the Project.

Construction Tracs No.: SL484 01C

***Total Estimated Cost of the Project**

Estimated Federal Aid Funds @ 94.3%

Estimated City Funds @ 5.7%

\$55,704.00

\$47,432.00

\$ 8,272.00

*(Includes construction, construction engineering administration, and incidentals)

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Agree to be the City's authorized agent for the Project and submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction and funding. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Approve the Project if such project construction funds are available by FHWA for construction of the Project. The State and FHWA hereby designates the City to self-administer the Project.

c. Upon execution of this agreement, make payments to the City for the direct actual cost of the construction of the Project, plus construction engineering, within 30 days after receipt and approval of an invoice.

d. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this agreement.

2. The City will:

a. With the aid and consent of the FHWA and State using Arizona Procurement Procedures, proceed to advertise for, receive and open bids, subject to the concurrence of FHWA and State. Enter into contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions and Standard Specifications at the lowest bid price.

b. Provide personnel to administer and supervise construction. All construction Project change orders are to be copied to the State. The FHWA will participate in the construction administration cost provided by the City up to 15 percent (15%) of the cost of construction. Construction administration costs not participated in by FHWA shall be borne by the City.

c. Consent to any inspections performed by the State, provide records or audit any books of the City in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules, and regulations of the State and federal government.

d Upon execution of this agreement invoice the State for the estimated 94.3% federal aid construction and construction administration costs addressed under this agreement. The City is entirely responsible for all costs incurred in performing and accomplishing the work as set forth in this agreement whether covered by federal funding or not.

e Provide electrical power, water connections and landscape maintenance during and after the construction phase all at the City's expense.

f Upon completion of the Project, shall provide for, at its own cost and as an annual item in its budget, perpetual and proper maintenance to the El Paso Southwest Railroad Depot Fountain and all enhancement improvements, including but not limited to, electrical power, water, and landscape care.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance or negligent performance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees, shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2. The cost of the construction and construction engineering work covered by this agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for electrical power, water, and maintenance shall be perpetual, unless assumed by another governmental entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 pertaining to State audit are applicable to this contract. In the event of such an audit, the City will bear all costs associated therewith.

7. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event

this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph

9. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518

10. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue - 616E
Phoenix, AZ 85007


City of Douglas
Public Works Director
425 10th Street
Douglas, AZ 85607

11. In accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

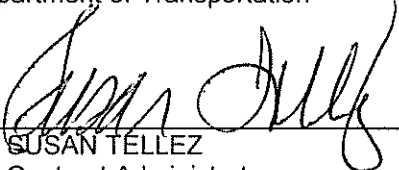
CITY OF DOUGLAS, ARIZONA

By


RAY BORANE
Mayor

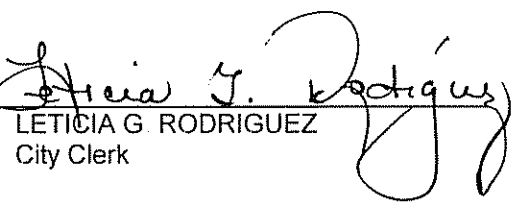
STATE OF ARIZONA
Department of Transportation

By


SUSAN TELLEZ
Contract Administrator

ATTEST:

By


LETICIA G. RODRIGUEZ
City Clerk

Resolution No. 04-356

A RESOLUTION OF THE MAYOR AND COUNCIL
OF THE CITY OF DOUGLAS, ARIZONA,
AUTHORIZING THE EXECUTION OF AN
INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF DOUGLAS AND THE
ARIZONA DEPARTMENT OF
TRANSPORTATION IN THE AMOUNT OF \$56,704
FOR THE RESTORATION AND
REHABILITATION OF THE EL PASO RAILROAD
DEPOT FOUNTAINS LOCATED ADJACENT TO
THE POLICE STATION AND ALLOCATING
\$8,272 AS THE CITY'S LOCAL MATCHING
FUNDS.

WHEREAS, the Arizona Department of Transportation and the City of Douglas seek to enter into an Intergovernmental Agreement in the amount of \$56,704 for the restoration and rehabilitation of the El Paso Railroad Depot fountains located adjacent to the Police Station and allocating \$8,272 as the City's local matching funds; and

WHEREAS, the Intergovernmental Agreement Project No. JPA 03-125 providing the terms and conditions of said agreement entered into by the parties is attached in Exhibit "A", and incorporated herein by reference; and

WHEREAS, it is in the best interests of the City of Douglas to enter into this agreement to provide needed improvements.

BE IT RESOLVED, by the City Council of the City of Douglas as follows:

Section 1. The terms of said Intergovernmental Agreement are in the best interest of the City of Douglas.

Section 2. The City Manager and City Clerk are hereby authorized to execute and deliver the Intergovernmental Agreement and any related documents necessary to consummate the transaction contemplated by the agreement for and on behalf of the City of Douglas.

Section 3. The officers of the City Council and the City of Douglas are hereby authorized and directed to fulfill all obligations under the terms of the Intergovernmental Agreement.

PASSED AND ADOPTED by the Mayor and Council of the City of Douglas, Arizona, this 14th day of July, 2004.

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By Ray Borane
Ray Borane, Mayor

Attest:

By Leticia G. Rodriguez
Leticia G. Rodriguez, City Clerk

Approved as to Form:

Anita L. Sanchez
Anita L. Sanchez, City Attorney

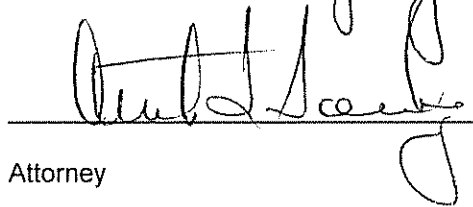
JPA

ATTORNEY APPROVAL FORM

FOR THE CITY OF DOUGLAS

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the City of Douglas, an agreement among public agencies, which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954, and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 14th day of July, 2004.


Attorney



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-0475TRN (**JPA 03-125**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 18, 2004

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", written in dark ink over a horizontal line.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section